

Highlands and Islands Enterprise Community Broadband Scotland

STATE AID PUBLIC CONSULTATION Kyles of Bute

22nd December 2017

New procurements to further extend coverage of Next Generation Access (NGA) Broadband across Community Broadband Projects within Scotland.

1. INTRODUCTION AND BACKGROUND

The Scottish Government has set ambitious policy objectives aimed at delivering world class digital infrastructure across Scotland by 2020.

As a key first step, over £400m is being invested in the Digital Scotland Superfast Broadband (DSSB) programme that is extending next generation broadband infrastructure into non-commercial areas. Alongside commercial rollout, the DSSB programme will extend access to next generation broadband to 85% of premises by 2015/16 and at least 95% of premises across Scotland by 2017/18.

The DSSB programme is being delivered through two regional projects: one covering the Highlands and Islands; the other covering the rest of Scotland. Both projects were procured in 2013, by Highlands and Islands Enterprise and the Scottish Government respectively, with BT the successful bidder for both. The R100 programme has been established to build on the investment in superfast broadband that has been realised through DSSB. The R100 programme will be a series of steps, or interventions designed to deliver the political commitment of 100% superfast coverage by 2021. It is anticipated that the bulk of the R100 Programme will be delivered through the upcoming R100 procurement scheduled to commence early 2018.

The Scottish Government has also established Community Broadband Scotland (CBS), to support the development of community-led schemes in those areas least likely to have a Next Generation Access solution delivered by the DSSB programme. The Scottish Government has committed £7.5 million to CBS to March 2018. In addition, £9 million has been allocated from the 2014-20 Scottish Rural Development Programme (SRDP) to support broadband delivery in the most rural communities. CBS is working with communities that are unlikely to benefit from the main programme. The objective of the Community Broadband projects is to extend the delivery of Next Generation Access (with download speeds of greater than 30Mbps) broadband to all parts of the community, within the limitations of the intervention area.

BDUK has been working with the European Commission to approve the terms of a new National Broadband Scheme for the United Kingdom (referred to hereafter as the 2016 NBS) which was announced on 26th May 2016. All Community Broadband projects intend to conduct further procurements under the 2016 NBS.

2. MARKET ENGAGEMENT AND ANALYSIS OF EXISTING COVERAGE

The base mapping for the Kyles Community Broadband project has been developed utilising information obtained by the Scottish Government in the R100 Open Market Review (OMR) conducted in December 2016/January 2017. This OMR was used to establish current and planned (next 3 years) commercial coverage of broadband services across Scotland by existing, and any prospective, broadband infrastructure providers. The Open Market Review process is not a specific requirement of the EC Guidelines, but is regarded as good practice to help inform the definition of the intervention areas prior to a State aid public consultation. The Scottish Government contacted all known broadband infrastructure operators within Scotland and other providers known to have (or potentially having) plans to deploy new networks across the UK with a formal request for information. The OMR and subsequent State aid Public Consultation was publicised through a notification on the Scottish Government's website. Operators were requested to provide information on their existing and planned NGA broadband infrastructure, and supporting evidence to substantiate existing and/or planned qualifying coverage.

Follow up consultation/review conducted by CBS with the Scottish Government has concluded that all of the target areas included in this State aid public consultation are believed to be NGA white. **For the avoidance of doubt all postcodes highlighted as being NGA white in the detailed maps (Annex 1) are considered to be eligible for intervention.**

This State aid Public Consultation is to enable all interested stakeholders (including the public, businesses, internet service providers and broadband infrastructure operators) to comment on the proposals for Kyles Community Broadband. In particular, this provides an opportunity for broadband infrastructure operators to review mapping to ensure that it correctly represents the information provided by the Scottish Government and that this information is still valid.

Upon completion of this State aid public consultation and review of all comments received, a NGA intervention area for the Kyles Community Broadband project will be defined. The State aid requirements which guide the determination of an intervention area for the purpose of public sector intervention in the delivery of broadband infrastructure are provided in section 3 below. All responses to the public consultation will be carefully considered and where necessary will be incorporated into the state aid maps. The state aid maps and a summary report confirming details of the changes made will be published on the CBS website shortly after the close of the consultation period. Where responses to the consultation are received, CBS will respond to these and provide an explanation of how the information submitted has been treated. The finalised intervention area will be submitted to BDUK's National Competence Centre (NCC) for approval against the State aid Framework.

3. STATE AID FRAMEWORK AND RULES

This section provides a brief introduction to the State Aid Framework for the purpose of informing responses to the public consultation. Respondents may wish to obtain their own professional/legal advice on the application of the State Aid Framework and rules that relate to this proposal.

The European Commission has published '*EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*' (2013/C 25/01)¹. These guidelines summarise the principles of the Commission's policy in applying the State aid rules of the Treaty to measures that support the deployment of broadband networks, and seek to ensure that State aid schemes for broadband are well-designed so that they target market failures and minimise negative effects on competition.

The guidelines require public interventions to be targeted so as to limit the risk of crowding out private investments, of altering commercial investment incentives and ultimately of distorting competition.

Planned public interventions can seek State aid approval directly from the Commission, or (as is the case with this proposal) seek clearance under a national scheme which has been pre-approved by the Commission.

Projects under the 2016 NBS will need to demonstrate their State aid compliance (in accordance with the terms of the scheme) in order to receive clearance from BDUK's National Competence Centre.

The Commission's guidelines distinguish between two types of broadband networks, namely basic broadband and NGA networks.

Basic broadband networks are generally those based on currently widely-deployed technologies such as fixed wired telephony networks (using ADSL/ADSL2+ technologies), non-enhanced cable TV networks (e.g. DOCSIS 2.0), mobile networks (2G/3G (UMTS)), some fixed wireless access (FWA) networks, and satellite networks.

NGA networks rely wholly or partly on optical elements (optical fibre) and are capable of delivering an enhanced broadband capability compared to existing basic broadband networks. Current qualifying NGA technologies are fibre-based networks (FTTx), advanced upgraded cable networks (DOCSIS 3.0) and certain advanced wireless access networks capable of delivering reliable high speeds.

Guidance on the characteristics of qualifying NGA technologies is available from BDUK.²

The Commission's guidelines also require that public intervention should be able to ensure a 'step change' in broadband availability. This is demonstrated by:

- Significant new investments in the broadband network;

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:en:PDF>

² <https://www.gov.uk/government/publications/2016-nbs-tech-guidelines>

- The new infrastructure brings significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition³;

The 'step change' in broadband availability shall be compared to that of existing as well as concretely planned networks.

The Commission's guidelines also distinguish between geographic areas on the basis of their existing or planned broadband infrastructure:

- 'White' areas are those in which there is no qualifying broadband infrastructure and none is likely to be developed within 3 years;
- 'Grey' areas are those where only one network operator is present or is to be deployed within the coming 3 years; and
- 'Black' areas are those where at least two networks of different operators exist or will be deployed in the coming 3 years.

This geographic mapping of White/Grey/Black areas is carried out separately in relation to basic broadband and NGA networks. NGA networks are mapped on the basis that, amongst other things, they have substantially higher upload speeds (compared to basic broadband networks)⁴ and are able to deliver broadband services at an access (download) speed of at least 30Mbps. Basic broadband for the purposes of the geographic mapping is based on the delivery of broadband services (download) speeds of more than 2Mbps and less than 30Mbps. It should be noted that the Better Broadband Subsidy Scheme has been developed by the UK government. It sets out to provide access to a subsidised broadband installation to homes and businesses that are unable to access a broadband service with a download speed of at least 2Mbit/s per second.

Public intervention can only take place in white NGA areas under the 2016 NBS. White NGA areas are those in which there are no NGA networks and none is likely to be developed within the next 3 years.

4. PROPOSED INTERVENTION

This State aid Public Consultation comprises a total of 624 premises as identified from Ordnance Survey AddressBase Plus (Epoch 40 – April 2016 release) that have been identified as NGA White as specified in Section 2. Table 1 provides a breakdown of the number of premises per postcode in scope of this State aid Public Consultation.

³ See Footnote 66 of the Commission's Guidelines - this sets out that the subsidised network should be pro-competitive (i.e. allow for effective access at different levels of the infrastructure).

⁴ Substantially higher upload speeds means at least a doubling of the maximum upload speed available on current generation access network(s) for given 'up to' packages available on basic broadband networks in the relevant intervention area.

Postcode	Non residential Premises	Residential Premises	Total Premises
PA20 0PZ	2	0	2
PA20 0QA	5	15	20
PA20 0QB	0	4	4
PA20 0QE	0	3	3
PA20 0QF	5	20	25
PA20 0QG	0	10	10
PA20 0QL	3	6	9
PA20 0QU	0	5	5
PA20 0QW	0	8	8
PA20 0QX	1	11	12
PA20 9LJ	0	2	2
PA20 9LN	0	1	1
PA20 9LP	7	20	27
PA20 9LR	3	1	4
PA20 9LX	0	5	5
PA20 9LZ	0	2	2
PA20 9NA	3	5	8
PA20 9NT	0	1	1
PA20 9NU	0	2	2
PA20 9NX	0	3	3
PA20 9PE	3	12	15
PA20 9PF	3	6	9
PA21 2AH	10	51	61
PA21 2BP	0	2	2
PA21 2DA	11	22	33
PA21 2EH	4	8	12
PA22 3AA	2	14	16
PA22 3AB	12	12	24
PA22 3AD	2	5	7
PA22 3AE	7	17	24
PA22 3AF	6	19	25
PA22 3AG	0	8	8
PA22 3AH	6	27	33
PA22 3AJ	2	9	11
PA22 3AP	3	5	8
PA22 3AR	3	29	32
PA22 3AS	6	39	45
PA22 3AT	1	15	16
PA22 3AU	0	4	4
PA22 3AX	0	4	4
PA23 7UG	1	8	9
PA23 7UJ	0	14	14
PA23 7UL	5	9	14
PA23 7UN	10	14	24

PA23 8RG	2	19	21
TOTALS	128	496	624

Table 1: Kyles Community Broadband Postcodes and Premises

Appendix 2 lists the premises in each postcode that are in scope of this State aid Public Consultation.

It should be noted that whilst this consultation includes for the mapping of basic coverage, it is not the intention of this procurement to undertake the deployment of basic broadband technologies. The intention is that bidders will be provided with details of all the areas where there is basic broadband so that any overbuild by a NGA solution under the 2016 NBS, will provide those premises with over 30Mbps or at least a doubling of existing speeds. Where the doubling is not possible, there will be an obligation on the procured supplier to ensure the design was optimized to limit the overlap of existing basic broadband network.

New Procurement

CBS in conjunction with INCA held market engagement and supplier warming in January 2016 and through this engagement and subsequent supplier feedback, has confirmed the use of gap funding as a preferred delivery model, however, alternative models may be considered by the community groups as contracting entities.

The procurement will be carried out to meet the specific requirements of the Public Contracts (Scotland) Regulations 2015 and the European Union Public Procurement directives. The tender is likely to utilise the Open or Competitive Procedure with Negotiation and will be conducted in a transparent and non-discriminatory manner to meet the requirements of the NBS 2016.

The procurement will be designed in such a way that it meets the specific requirements of the NBS 2016 to optimise the number and quality of bidders by reducing any hurdles to participation in procurements by smaller suppliers, and to encourage collaboration between operators so that a range of appropriate solutions can be brought forward. This was also a key objective of the market engagement exercise and, when the procurement is launched, the white areas may be sub-divided into a number of lots or areas to promote this objective.

The Kyles Community Broadband project aims to deliver a Next Generation Access Solution (with download speeds of greater than 30Mbps) to 100% of premises in the NGA intervention area. CBS will provide support throughout the procurement process with a view to processing an overall capital grant application of up to £2.5 million. Kyles Community Broadband (KCB), a Community Interest Company registered with the Office of the Regulator of Community Interest Companies will lead the upcoming procurement and will seek to maximise private sector funding to minimise public sector grant support.

5. TIMESCALES

This consultation will be open until 26th January 2018.

Once the State aid public consultation is complete and the intervention area of the Kyles Community Broadband Project has been formalised, the final ITT will be published for suppliers to bid for the opportunity to deliver NGA Broadband to the in-scope premises. The intention is to award a contract to enable the related extended deployment plans for broadband infrastructure in Year 2018.

6. STATE AID PUBLIC CONSULTATION

The EU Guidelines (at paragraph 78) and the 2016 NBS set out the requirements to hold a public consultation in order to validate the intervention area mapping by allowing all interested stakeholders an opportunity to comment on the planned aid measure.

The purpose of this document is to fulfil those requirements by publishing a description of the proposed aid measure, and seeking feedback from all interested stakeholders. The mapping for basic and NGA broadband is shown in the attached maps (Appendix 1).

The attached map of the NGA broadband intervention area relies on the definitions of white, grey and black areas, as set out in the EU Guidelines (and as summarised above in section 3).

This State aid public consultation and the proposed NGA broadband intervention area maps are available to all stakeholders on the CBS website at <http://www.hie.co.uk/community-support/community-broadband-scotland/updates/state-aid.html> and will also be available via BDUK's website at [BDUK Table of local broadband projects](#).

The final public consultation report will be published on the CBS website as detailed above.

7. RESPONDING TO THIS STATE AID PUBLIC CONSULTATION

CBS is requesting information and supporting evidence in relation to the presence of NGA broadband infrastructure within the intervention area and wish to hear from all relevant stakeholders (including residents, businesses as well as broadband infrastructure operators), particularly in relation to areas to be targeted as part of the NGA intervention area shown in Appendix 1.

Note: For the avoidance of doubt, there is no need to respond to this public consultation if you have no comment to make.

For residents and businesses, where this relates to the ability to receive an NGA service, any information provided in response to this State aid public consultation should as a

minimum include (but need not be limited to) the address of the property or area that the submission relates to and the nature of the concern.

If the response is from an infrastructure provider and comments on the white, grey and/or black classifications within the attached maps or data, or on the wholesale products to be offered via the subsidised network, then the submission should also include the specific information set out in Section 8.

A full Public Consultation response template incorporating a spreadsheet with all of the premises within the proposed area will be released to providers once the attached Ordnance Survey One Scotland Mapping Agreement (OSMA) End User/ Contractor licence has been signed and returned.

This is a requirement of the HIE license with Ordnance Survey in order to share the base data with suppliers. Please ensure that the relevant company details are provided where highlighted in the Contractor license document before returning.

For all submissions, CBS would be grateful if you could confirm in your submission the following:

- Your organisation's name (if applicable)
- Your organisation's address (if applicable)
- Your name
- Position
- Contact telephone number
- Email Address

CBS also requests confirmation from an authorised signatory that the information provided is suitably accurate and up to date.

Please send your response to arrive no later than 5pm on 26th January 2018 to:

By email: cbs-enquiries@hient.co.uk (marked "HIE Community Broadband Projects Consultation Response").

Or by post:

Highlands & Islands Enterprise
Community Broadband Scotland
An Lòchran,
10 Inverness Campus,
Inverness
IV2 5NA

Please note that the data you provide in your response will be treated as commercially confidential to your organisation. However, it may be necessary to share/some all of your response data with our professional advisers and/or DCMS/BDUK, Ofcom, the BDUK National Competence Centre and the European Commission in the course of seeking State aid approval. It should also be noted that it is a State aid requirement to use this information to produce State aid maps to define white, grey and black areas for basic and NGA broadband. However, the published maps will show the aggregated White/Grey/Black NGA and basic broadband areas, not the data provided on a per-

operator basis. The final maps that will be used for procurement purposes will be published shortly after the conclusion of this State aid public consultation and once approved by the BDUK National Competence Centre.

If you have any questions about any of the above, please contact the CBS team by email at: cbs-enquiries@hient.co.uk

8. INFORMATION REQUESTED

This section specifies the information you are requested to provide in response to this State aid public consultation in relation to the presence of broadband infrastructure.

CBS is requesting information on, and supporting evidence for, any current or planned (within the next 3 years) investment in broadband infrastructure in the proposed broadband projects intervention area, where this may not be already included within the proposed NGA and basic broadband state aid maps attached.

For any current or planned coverage not included within the proposed State aid intervention areas shown on the attached map, CBS is requesting information on the postcodes, and the number of premises within each postcode, covered (or planned to be covered) by your broadband infrastructure investment. By 'covered' (or 'passed') CBS means that fixed network infrastructure is or will be available to the premises, potentially subject to a final drop connection, or that the premises are able to receive a suitable quality radio signal over the air interface, potentially subject to the installation of a suitable antenna.

Any information provided in response to this State aid public consultation should include, but need not be limited to:

- Detailed maps for NGA broadband showing existing coverage and, separately, planned coverage, for at least the next 3 years;
- Details of premises covered or passed to individual premises level to appropriately define the footprint of operator's coverage or intended coverage (please refer to the Public Consultation Response Template). Confirmation should be provided that fixed network infrastructure is available to the premises, potentially subject to a final drop connection, or that the premises are able to receive a suitable quality radio signal over the air interface (in the case of wireless or satellite coverage), potentially subject to the installation of a suitable antenna;
- A detailed description of the technology solution(s) deployed (or to be deployed) in your broadband infrastructure, demonstrating how they meet the minimum standards as set out in the BDUK NGA Technology Guidelines⁵;
- A description of the services/products currently offered, and separately those services/products to be offered within the next 3 years;

⁵ <https://www.gov.uk/government/publications/2016-nbs-tech-guidelines>

- Installation, annual/monthly subscription, and additional volume or per-service tariffs for those services/products (identifying whether such tariffs are inclusive or exclusive of VAT);
- Upload and download speeds typically experienced by end-users, and how these may vary by factors such as distance, increased take-up or demand, contention, etc.;
- Appropriate indicators of the quality of services (e.g. contention ratios, bandwidth allocation per user, etc.), including any characteristics (e.g. latency, jitter) that are required to support advanced services such as video conferencing or HD video streaming;
- Evidence to substantiate actual or planned coverage claims, including business cases and evidence of available funding to enable plans to be fulfilled;
- Details and planned timing of roll-out of any future investments, including further investments required to cope with future increases in take-up or demand.

Please supplement the required information above with any supporting evidence as you consider appropriate (e.g. links to public websites).

CBS would also be interested to hear the view from operators as to the types of wholesale access products they would like to see offered on any newly created subsidised NGA network infrastructure resulting from any public intervention in the future. CBS believes that this could be a useful market research exercise and the information may inform the intervention design. Please note that Community Groups are not obliged to include for these products to be included in the invitations to tender, unless the access product is already required under any State aid Decision⁶. This does not negate the need to allow the access seeker to request new forms of access product through the formal general access provisions under the terms of a future State aid Decision in relation to the provision of subsidised broadband infrastructure.

9. NEXT STEPS

Following any responses received to this State aid public consultation by the closing date of 26th January 2018, CBS plans to publish the final intervention area maps shortly after the close of the consultation period.

This will be followed by the launch of tender documentation to Suppliers to bid for the opportunity to fulfil a new contract to deliver the extended coverage.

Information about CBS can be found at <http://www.hie.co.uk/community-support/community-broadband-scotland/>.

⁶ Operators will still be able to request new forms of access products on the subsidised NGA network infrastructure through the formal general access provisions under the terms of a future State aid Decision.

Appendix 1:

Kyles Community Broadband Project Basic and NGA state aid maps

See separate pdf files

Appendix 2:

Kyles Community Broadband Project Postcode/ premises list

A full Public Consultation response template incorporating a spreadsheet with all of the premises within the proposed area will be released to providers once the attached Ordnance Survey One Scotland Mapping Agreement (OSMA) End User License contained in Appendix 3 has been signed and returned.

Appendix 3:

Ordnance Survey One Scotland Mapping Agreement (OSMA) End User licence.



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Please insert Organisation name and address in item 2, print, sign and witness and return two copies to:

**Heather Smith
Data Analyst
Highlands and Islands Enterprise
An Lòchran
10 Inverness Campus
Inverness
IV2 5NA**

This is a requirement of the HIE license with Ordnance Survey in order to share the base data with suppliers. Please ensure that the relevant company details are provided in the Contractor license document before returning.

Organisations that have completed an Ordnance Survey One Scotland Mapping Agreement (OSMA) End User licence on a previous occasion should email CBS at cbs-enquiries@hient.co.uk confirming a license is in place and requesting the base data. If contacting CBS by email or post please include the following in the subject field/ letter head: SAPC Kyles Community Broadband.

When returning the document or contacting CBS, please confirm the following:

- Your organisation's name (if applicable)
- Your organisation's address (if applicable)
- Your name
- Position
- Contact telephone number
- Email Address

This information will enable the prompt transmission of the Postcode/ premises list for the Kyles Community Broadband project.